



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD FFL MNDL-S MNDCL-S MNRL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidentiary materials.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for losses arising out of this tenancy?

Is the tenant entitled to the return of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

This tenancy began on February 16, 2019, and ended on September 30, 2019. The landlords testified that rent was reduced from \$650.00 to \$500.00 plus 4 hours labour a month. Both parties confirmed that no forwarding address was provided by the tenant at the end of the tenancy, nor was a move-in or move-out inspection performed by the landlord. The landlords collected a security deposit in the amount of \$250.00 and a pet damage deposit in the amount of \$200.00, which the landlord still holds.

The landlord made an application for the following monetary orders:

Item	Amount
Rug Doctor Rental & Cleaner	\$61.97
Carpet Cleaning	75.00
Cabin Cleaning	133.33
Quote for Door Repair	403.20
Unpaid Rent	650.00
Labour not provided (7 months * \$75.00)	525.00
Total Monetary Order Requested	\$1,848.50

The landlords testified the tenant moved out without proper written notice to do so. The landlords testified that as a result they lost a month's rent for October 2019, and was not able to re-rent the home until November 2019 for \$625.00 per month. The landlords dispute that they had a tenant lined up. The tenant testified that a verbal agreement was made for him to move out as the landlords wanted the cabin back to rent to a friend. The tenant testified that the landlords had no issue ending the tenancy in September of 2019, and that the landlords had started to show the cabin to prospective tenants on September 24, 2019 after a text sent on September 20, 2019. The tenant testified that he had moved out in order to help the landlords. The tenant testified that he had went on a hunting trip, and had left some belongings behind with permission of the landlords, only to find out that the landlords left his items out in the rain, ruining them.

The landlord are also seeking reimbursement of the labour not provided by the tenant for this entire tenancy. The landlord testified that due to injury the tenant failed to provide the full 4 hours of labour per month as agreed upon. The landlord is seeking a

reimbursement of the rent reduction given in exchange for the labour in the amount of \$75.00 per month (half of the rent reduction) for 7 months for a total monetary order of \$525.00. The tenant is disputing this claim, stating that he even returned on October 16, 2019 to cut up a tree as agreed upon.

The landlords testified that the tenant failed to leave the cabin in reasonably clean and undamaged condition. The landlord testified that the tenant had a dog, and failed to clean the carpet at the end of the tenancy. The landlord submitted receipts and invoices for the rental of a rug doctor as well as for carpet cleaning, and cleaning. The tenant disputes this claim, stating that the carpet was 30 years old, and worn out.

The landlords are also seeking a monetary order for a damaged door. The landlords submitted a photo of a door which they testified was not damaged or scratched at the beginning of the tenancy. The landlords provided a quotation in their evidentiary materials for repair of the door. The tenant disputes this claim.

The tenant is requesting the return of his deposits plus recovery of the filing fee.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement

3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlords bear the burden of establishing their claim on the balance of probabilities. The landlords must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlords must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlords must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The landlords are seeking a monetary order for work that was not performed by the tenant, which the tenant disputes. In light of the disputed testimony, I find that the landlords failed to meet the burden of proof to support that the tenant failed to perform the work promised, and furthermore I find that the landlords failed to provide sufficient evidence to support the value of the loss applied for. Accordingly, I dismiss this portion of the landlords' monetary claim without leave to reapply.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];

- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Although the tenant testified that the landlords had agreed for the tenant to move out, I find that the tenant did not provide sufficient evidence to support that this tenancy was ended in a manner that complies with section 44 of the *Act* as set out above. The evidence of the landlords is that they were able to re-rent the suite, and the landlords are seeking a monetary order for lost rental income for the month of October 2019.

I am satisfied that the landlords had made an effort to mitigate the tenant's exposure to the landlords' monetary loss of rent for October 2019, as is required by section 7(2) of the *Act*. I find it undisputed that the landlords started showing the rental unit in September 2019, and found a new tenant for November 2019. On this basis, I allow the landlords a monetary claim for the loss of rental income. I accept the testimony of the tenant that he had returned in October 2019 to perform some labour. On this basis, I allow the landlords a monetary order in the amount of \$500.00 for the loss of rental income, plus \$75.00 for labour not performed, for a total monetary order of \$575.00.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear.

I note that the landlords failed to comply with sections 23 and 35 of the *Act* which requires the landlords to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*.

Despite the photo and quotation submitted by the landlords in support of the landlords' monetary claim for damage to the door, I am not satisfied that the landlords fulfilled their obligation to support that the damage to the door was caused by the tenant during this tenancy. Without any move-in or move-out inspection reports, I find that there is no way to determine which damages occurred during this tenancy, and what the pre-existing condition of the home was, especially considering the considerable age of the home. Accordingly, I am dismissing the landlords' claim for repairs without leave to reapply.

Similarly, in light of the disputed claim for carpet cleaning, I am not satisfied that the tenant failed to leave the carpet in reasonably clean condition as I am unable to ascertain the age or condition of the carpet at the beginning or end of the tenancy. On this basis, I dismiss the landlords' monetary claim related to the carpet cleaning and rug doctor rental without leave to reapply.

I find that the landlords provided sufficient evidence to support that the tenant failed to leave the cabin in reasonably clean condition. The invoice included a detailed account of the cleaning that was performed at the end of this tenancy. I allow the landlords' monetary claim in the amount of \$133.33 for cleaning.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security and pet deposit in partial satisfaction of the monetary claim.

I allow both parties to recover their filing fees. As both parties obtained offsetting monetary awards for the filing fee, no order will be made in regards to the recovery of their filing fees.

Conclusion

I issue a Monetary Order in the amount of \$258.33 in the landlords' favour under the following terms:

Item	Amount
Cabin Cleaning	\$133.33
Loss of Rent for October 2019	575.00
Less Deposits Held	-450.00
Total Monetary Order	\$258.33

Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlords' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 15, 2020

Residential Tenancy Branch